the imperilled property. However desirable this broad interpretation may be, it includes voluntary acts of human beings acting, perhaps, under stress or duty, but still acting as free agents. It must depend, therefore, not on any theory of causation, but on a construction of the contract. This construction is possible because the insured is impliedly and often expressly [1] under the obligation of making all reasonable exertions to extinguish the fire and prevent avoidable consequences.[2] To extend such construction, however, to cover the case of property destroyed to prevent the spread of fire is far more difficult, for then the losses are incurred not for the benefit of the particular property insured.[3] Whether or not this result [4] is fair to the insurer, it is submitted that it can be reached consistently only by the broadest interpretation of the contract of insurance and not by the artificial rule of proximate cause.

Furthermore, under this theory the clauses — generally adopted and in the standard policies — excepting loss by explosion and loss caused by order of the city, etc., become very material. In spite of these clauses it is generally held,[5] at any rate when an explosion follows an "accidental fire," that the insurance company is not exempt from liability. In the same way the courts would probably disregard the second exception in case of property destroyed by the city to stop a conflagration. But, if the contract be interpreted, it would seem that these exceptions should be effective.[6]

The alternative question (2) of the right of the owner to recover from the municipality has almost always, in the absence of statute, been answered in the negative. The courts have based this result most soundly on the ground that the municipal corporation is strictly limited [7] by its charter, and they have only suggested the possibility of a quasi-contractual right. This right Mr. Wigmore strongly advocates. The most cogent analogy advanced in favor of his theory seems to be the doctrine of general average [8] in maritime law, under which every person whose property is preserved at the expense of another's is liable to contribution in proportion to the value of his share of the cargo. But the language of the only case [9] applying the suggested quasi-contractual doctrine under circumstances like the present, is "that those for whose supposed benefit the sacrifice is made should be liable." A "supposed benefit" seems too conjectural to found an action in implied *assumpsit*, and it is equally conjectural whether the city as a whole enjoyed the "supposed benefit." As the certainty of the benefit and of the party benefited, which are fundamentally requisite in the law of general average, are both lacking here, no action for quasi-contractual contribution should lie against the municipality. Instead, the remedy would seem to be legislation, in view of which the writers append the draft of an all-embracing statute.

CONDITIONS IN CONTRACTS. — The influence of the teachings of Professor Langdell and Professor Williston on the subject of conditions in contracts is evidenced by a recent article by Mr. George P. Costigan, Jr., who gives a summary of the questions. *Conditions in Contracts*, 7 Colum. L. Rev. 151 (March, 1907). The writer first defines the three classes of conditions, — express conditions, those implied in fact, and those implied in law. He indicates pointedly that while the first two classes are practically alike, the third differs greatly

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[1] Mass. Rev. L. 1902, c. 118, § 60.
[2] Brady *v.* N. W. Ins. Co., 11 Mich. 425.
[3] Cohn *v.* Nat'l Ins. Co., 96 Mo. App. 315, 319.
[4] The Metropolitan Fire Brigade Act, 28 and 29 Vict., c. 90, § 12, provides that damage occasioned by the Fire Brigade in "pulling down" buildings to put an end to a fire "shall be deemed to be damage by fire within the meaning of any policy against fire."
[5] Washburn *v.* Ins. Co., 2 Fed. Rep. 304.
[6] Hustace *v.* Phœnix Ins. Co., 175 N. Y. 292.
[7] Field *v.* City of Des Moines, 39 Ia. 575.
[8] See Star of Hope, 9 Wall. (U. S.) 203, 228.
[9] Bishop *v.* Mayor, 7 Ga. 200.

from them both, in that it rests not upon the intent of the parties, but, without regard to any intent, is read into the contract to meet the ends of justice.[1] The article proceeds with a short history of the subject from the time when the promises in a contract were regarded as independent, until, under Lord Mansfield,[2] they became so dependent that the party suing was generally required to show performance or offer to perform to put the other party in default. The writer then considers the classes of conditions more specifically.

In these details he fails to trace clearly the principles stated earlier in his article. He does not point out that the materiality of a breach, depending on the principle of a condition implied in law, should be decided on grounds of justice rather than on the intention of the party to repudiate.[3] Nor does he show that the reason why a breach *in limine* is more likely to be material than a breach after part performance is because a forfeiture is more likely to result in the latter case.[4] There is considerable discussion regarding a breach which "goes to the essence," but this phrase does not carry us very far when we are looking for a basic principle. The writer shows by his own wording how the term "implied condition" is likely to mislead,[5] when, in discussing the question of anticipatory breach, he says that "it is an implied condition of a contract that the promisor shall not announce beforehand that he is not going to perform." He would seem to mean by this statement that the reason for giving a defense rests upon the court's interpretation of the intent of the parties. In the very next statement, however, he shows that the defense is really equitable when he adds that the party may withdraw the repudiation at any time before it has been acted upon. The article would have been more valuable if it had brought out more clearly this fundamental distinction between the different conditions, and devoted less space to the general summary.

ALIEN CONTRACT LABOR LAW, THE. *Samuel P. Orth.* Reviewing the growth of legislation and its interpretation by the courts. 22 Pol. Sci. Quar. 49.

AMENDMENT OF STATE CONSTITUTIONS. *James Wilford Garner.* A strong argument for more wieldy procedure, founded on a careful review of the constitutional provisions and observation of their workings. 1 Am. Pol. Sci. Rev. 213.

APPLICABILITY OF THE RULE RES IPSA LOQUITUR AS BETWEEN MASTER AND SERVANT. *Anon.* 13 Case & Comment 118. See 20 HARV. L. REV. 228.

CAN THE UNITED STATES BY TREATY CONFER ON JAPANESE RESIDENTS IN CALIFORNIA THE RIGHT TO ATTEND THE PUBLIC SCHOOLS? *William Draper Lewis.* Answering this question in the affirmative. 55 Am. L. Reg. 73. See 20 HARV. L. REV. 337.

COMPENSATION FOR PROPERTY DESTROYED TO STOP THE SPREAD OF A CONFLAGRATION. *Henry C. Hall* and *John H. Wigmore.* 1 Ill. L. Rev. 501. See *supra.*

CONDITIONS IN CONTRACTS. *Geo. P. Costigan, Jr.* 7 Colum. L. Rev. 151. See *supra.*

CONSTITUTIONAL POSITION OF THE HOUSE OF LORDS, THE. *G. Glover Alexander.* Considering its position at present as opposed politically to the House of Commons, and the possibilities of its reform. 32 L. Mag. & Rev. 129.

DELAY AS A DEFENSE TO SPECIFIC PERFORMANCE. *Sarat Chandra Chaudhri.* 4 Allahabad L. J. 55.

ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS, THE. *Aula Gentium.* 32 L. Mag. & Rev. 155.

EQUITABLE OWNERSHIP. *Anon.* Pointing out the tendency to treat certain equitable rights not as mere choses in action but as rights *in rem.* 122 L. T. 312.

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[1] See 19 HARV. L. REV. 462.

[2] Kingston *v.* Preston, 2 Dougl. 689.

[3] Freeth *v.* Burr, L. R. 9 C. P. 208; see 14 HARV. L. REV. 317, 323.

[4] *Cf.* Boone *v.* Eyre, 1 H. Bl. 273 n., where a defense was refused presumably because a forfeiture would result, and Duke of St. Albans *v.* Shore, 1 H. Bl. 270, where a defense was given under very similar facts, except that there was no forfeiture.

[5] See 14 HARV. L. REV. 421, 424.

IMPRISONMENT OF CRIMINAL CORPORATIONS, THE. *Donald R. Richberg.* Replying to objections recently expressed against the theory, that, as a penalty for crimes of corporations, the state should take over the management of the corporate business for a certain time and reserve its profits wholly to the use of the state. 19 Green Bag 156.

JURISDICTION AND PRACTICE UNDER THE ACT OF CONGRESS, APPROVED JUNE 11th, 1906, RELATING TO THE LIABILITY OF COMMON CARRIERS TO THEIR EMPLOYEES, THE. *John T. Harris.* 12 Va. L. Reg. 866.

LAW CHANGES PROPOSED. *A. U. M.* Suggesting federal divorce regulations within the present powers of Congress. 68 Alb. L. J. 383.

LEGAL ASPECTS OF THE SUBMARINE CABLE AND WIRELESS TELEGRAPH IN WAR. *Charles L. Nordon.* Advocating an international rule to determine under what circumstances cables may be cut. 32 L. Mag. & Rev. 166.

LONG-HAUL LEGISLATION AND LAW-WRITING, BEING REFLECTIONS UPON A NEW WORK ON RAILROAD RATE REGULATION. *Charles E. Grinnell.* Criticizing The Law of Railroad Rate Regulation, by Profs. J. H. Beale, Jr., and Bruce Wyman. 41 Am. L. Rev. 1. See 20 HARV. L. REV. 340.

MARRIAGE IN ROMAN LAW. *Émile Stocquart.* 16 Yale L. J. 303.

PRESUMPTIONS AS TO POSSIBILITY OF ISSUE. *Anon.* Discussing under what circumstances the court will disregard the possibility of issue. 122 L. T. 405.

TREATY-MAKING POWER AND THE RESERVED SOVEREIGNTY OF THE STATES, THE. *Arthur K. Kuhn.* Contending that where a state law and a treaty conflict the former must give way. 7 Colum. L. Rev. 174.

II. BOOK REVIEWS.

THE FEDERAL POWER OVER CARRIERS AND CORPORATIONS. By E. Parmalee Prentice. New York: The Macmillan Company. 1907. pp. xi, 244. 8vo.

In April, 1800, Thomas Jefferson wrote to Edward Livingston:

"The House of Representatives sent us yesterday a bill to work Roosewell's copper mines in New Jersey. I do not know whether it is understood that the Legislature of Jersey was incompetent to do this, or merely that we have concurrent legislation under the sweeping clause. Congress are authorized to defend the nation. Ships are necessary to defense; copper is necessary for ships; mines necessary for copper; a company necessary to work mines; and who can doubt this reasoning who ever played at 'This is the House that Jack Built'?"

Plainly "men may construe things after their fashion clean from the purpose of the things themselves."

To meet such perverted methods is the purpose of Mr. Prentice's book. The work now put forward in small compass is part of the results of twenty years of study devoted by a trained constitutional lawyer to the question, how far the Congress may constitutionally legislate in regard to corporations and common carriers of goods and persons. These questions belong to the domain of constitutional history. In following this development legal decisions tell but part of the story. The practice of states and of Congress must also be considered. Undisputed constructions are not often involved in litigations, and may appear only by study of constitutional practice, which for this reason is sometimes more important than decisions of the highest court. In this history the purpose of state and federal statutes and the contemporary significance of legal decisions have been exhaustively studied, and the results clearly, logically, and concisely stated. Much new material is made available, and important decisions are shown to have a meaning quite different from that which a modern reader would receive from the reports alone.

This is especially true of the great case of Gibbons *v.* Ogden. Marshall's broad references to a federal power to regulate commerce which was plenary and supreme, relate, Mr. Prentice says, only to coasting trade and the federal